IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.
A.O. No. 364/2003

U.P. State Road Transport Corporation through its
Regional Manager, Meerut Depot ……Appellant.

Versus

Smt. Munni Devi W/o Late Raj Kumar R/o Village
Shahapur Shetal Khedha, P.S. Pathari, Tehsil
and District Haridwar ……. Respondent.

Sri Ashish Joshi, learned counsel for the appellant.
Sri B.M. Pingal, holding brief for Sri Vivek Shukla,
Learned counsel for the respondent.

(Hon'ble B.C. Kandpal, J.)

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 07-08-2003 passed by Motor Accident Claims Tribunal/District Judge, Haridwar in Motor Accident Claim Case No. 12 of 2001, Smt. Munni Devi Vs. U.P.S.R.T.C. and another, whereby the learned Tribunal has allowed the claim petition and has awarded Rs. 1,00,000/- as compensation along with interest @ 9% per annum.

2. Brief facts, giving rise to the present appeal, are that Raj Kumar along with Kulwendra Singh was going on the motor cycle No. UP 10D-2943 of Charan Singh on 24.12.2000. The said motor cycle was being driven by Charan Singh. As soon as they reached near Lahar Hotel a little ahead of Bhagwanpur, at about 6.00 p.m., the motor cycle was hit by UPSRTC bus No. UP 15J-8419 being driven rashly and negligently by its driver, with the result they all sustained grievous injuries. As a result of injuries, Charan Singh died on the spot while Raj Kumar and Kulvendra Singh died in the Government Hospital Hardwar. The report of the accident was lodged in the concerned Police Station. Deceased Kulwendra Singh was 7-year-old at the time of accident. The mother Smt. Munni Devi has filed the claim petition for compensation.

3. The opposite parties have contested the case by filing their joint written statement. They denied all the allegations of the claim petition and in additional plea they alleged that on 24.12.2000 the Corporation vehicle No. UP -15J-8419 was being driven by its driver in moderate speed. The said motorcycle was being driven rashly and negligently due to which the accident occurred and for their own negligence the Opp.parties cannot be held liable.

4. The learned Tribunal framed necessary issues in the case. The Tribunal has come to the conclusion that the motor accident resulting into injuries and consequent death of the deceased was caused due to rash and negligent driving by the driver of the offending bus and has allowed the claim petition, as mentioned in the impugned order, against the O.P.No.1-appellant. Aggrieved, the U.P.S.R.T.C.-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the accident in question was not the result of rash and negligent driving of driver of the bus in question; but on the part of driver of the motorcycle No. U.P. 10-D-2943; that the deceased was not holding a valid driving licence and that the quantum of compensation is not based on the evidence on record.

5. Heard Sri Ashish Joshi learned counsel for the appellant, Sri Vivek Shukla, learned counsel for the respondents/claimants and perused the record.

6. It has been vehemently argued on behalf of the appellant, UPSRTC, that the motor accident was not caused due to rash and negligent driving by the driver of the bus involved in the accident, but the accident was the result of own negligence and rashness on the part of the driver of motor–cycle who also died in the said accident. It has been submitted that the driver of the bus was driving the vehicle in moderate speed, therefore, the findings of the learned Tribunal to the contrary are liable to be set aside. I have considered the entire evidence available on record on this point. In this case, the claimant has filed the Photostat copy of the First Information Report, the site plan of the place of occurrence and document of registration of the

offending bus, fitness certificate, driving licence of the driver and post mortem report of the deceased. These documents prima facie show that the accident was caused due to the rash and negligent driving by the driver of the bus. The most important aspect of the case is that the accident in question is admitted to the opposite parties, but they have disputed the manner of accident. Besides, the Opp party-appellant in support of its case has produced the driver of the bus involved in the accident in the witness box. We have scrutinized the testimony of this witness. This witness, D.W.1, Ramesh Chandra, driver of the bus, has not even stated that he had reported the matter to his department in his examination-in-chief. Had the driver been innocent, there was no reason why he would have not reported the accident to his employer/department. It is not at all the case of the appellant that the driver of the bus has made a report of the accident with the police. On the other hand, the claimants have adduced as many as three witnesses, namely, P.W.1-Smt. Munni Devi, PW. 2- Karan Singh S/o of Badam Singh and P.W.3, Mange Singh S/o Santa Singh. I have closely gone through the statements of all these witnesses. A perusal of the statements of P.Ws. coupled with the first information report and especially the charge-sheet submitted in the criminal court against the driver of the offending bus, it is crystal clear that the accident resulting into injuries and death of the deceased was caused due to rash and negligent driving by the driver of the bus No. U.P. 15J-8419 and it was not the outcome of the negligence on the part of the deceased or on the part of Charan Singh, who was driving the said motor-bike and also died in the said accident. The learned counsel for the appellant could not explain as to why the charge-sheet has been submitted against the driver of the offending bus had he been innocent. The learned counsel could not even point out that the charge-sheet filed in the present case related to some other accident. The First Information Report, the charge-sheet and the site plan of the place of accident, filed on record clearly make out a prima facie case against the driver of the offending bus. The witness produced by the appellant, namely, D.W.1, Ramesh Chandra, could not dare to say in his statement on oath that he had reported the accident to his department. These are very strong circumstances against the

appellant, therefore, considering the totality of the entire evidence on record, I am of the view that the learned Tribunal has rightly held that the motor accident in question was caused due to rash and negligent driving by the driver of the bus involved in the accident.

7. The appellant has challenged the quantum of compensation and submitted that the deceased was 7 years of age at the time of accident and he had no earning. The Tribunal has awarded exorbitant amount of compensation.

8- Perusal of finding recorded by the Tribunal shows that the Tribunal has awarded the fixed amount of Rs. 50,000/- for no fault liability U/S 140 of the Motor Vehicle Act, 1988 and further awarded Rs. 50,000- towards loss of love and affection. The Tribunal also directed that the amount so decreed be deposited by the U.P.S.R.T.C. within one month from the date of the award, failing which interest @ 9% per annum shall be payable on the aforesaid awarded sum of Rs.1,00,000/- from the date of presentation of claim petition till the final date of payment. Considering the facts and circumstances of the case, I am of the view that the amount of Rs. 1,00,000/- is a just and adequate amount of compensation in lieu of death of minor son of the claimant.

8- No other point was urged or argued before us in this appeal.

9. In the result, the appeal is devoid of merit and is liable to be dismissed.

10. The appeal is dismissed. The judgment and award, appealed against, is upheld. No order as to costs. The amount deposited in the appeal be remitted to the Motor Accident Claims Tribunal concerned within a month for being paid to the claimant-respondent.

(B.C. Kandpal, J.)

04.12.2006
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